JACK J. AND LAVONN CURTIS

IBLA 82-71 Decided April 26, 1982

Appeal from decision of Sacramento, California, District Office, Bureau of Land Management, rejecting an application to purchase a tract of land within an unpatented mining claim pursuant to the Mining Claims Occupancy Act. S 4255.

Reversed and remanded.

1. Mining Occupancy Act: Principal Place of Residence

> The Mining Claims Occupancy Act, 30 U.S.C. § 701 (1976), only requires that valuable improvements on an unpatented mining claim constitute a principal place of residence for a qualified applicant, not that such be the principal place of residence of the applicant.

APPEARANCES: Gwendolen S. Buck, Esq., Pacific Grove, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Jack and LaVonn Curtis have appealed from the September 22, 1981, decision of the California State Office, Bureau of Land Management (BLM), rejecting their application filed pursuant to the Mining Claims Occupancy Act (Act) of October 23, 1962, as amended, 30 U.S.C. § 701 (1976), and 43 CFR 2550, to purchase a portion of the Arrowhead placer mining claim.

The claim, situated in Big Sur, California, was sold to appellants by C. G. Hiatt on April 1, 1950. Appellants' application under the Act for fee title to the land was filed with BLM February 16, 1971. On June 11, 1971, BLM forwarded the application to the Forest Service (the claim is located in Los Padres National Forest) for consideration. BLM received the report and recommendation of the Regional Forester on June 12, 1981, and on September 22, 1981, issued a decision rejecting appellants' application.

The BLM decision states that appellants are not qualified applicants under the Act primarily because the claim was not the applicants' principal

place of residence during the qualifying period of July 23, 1955, through October 23, 1962. The decision is based in large part on the voting records of appellants, the employment records of Mrs. Curtis, and telephone listings of appellants for Monterey and San Benito Counties. BLM also states that "[t]he intent of the law as expressed in departmental decisions was to preserve homes for qualified occupants of mining claims, places where they have lived for years and from which their forced removal because of the invalidity of the claims would be a real hardship * * *." (Emphasis added.) See Funderberg v. Udall, 396 F.2d 638, 640 (9th Cir. 1968). BLM states that if appellants were forced to move they would have suffered no real hardship as they owned other homes during the critical period.

Appellants through their statement of reasons indicate that the report of the Forest Service overemphasized its discovery of the voting records and school attendance of the Curtis family and underemphasized the fact that Jack Curtis remained in residence at the claim while the family was elsewhere. It is explained that Mrs. Curtis, a school teacher, was forced to leave the claim to seek employment while Mr. Curtis, a freelance writer, remained at the claim.

Appellants contend that voting records are not conclusive of residency, citing Ola N. McCulloch Sibley, 73 I.D. 53 (1966). In Sibley, supra at 59, the Department stated:

> "A principal place of residence" is not necessarily "the principal place of residence" of an applicant, and a person may have more than one principal place of residence. Thus, the change in voting registration from one county to another does not necessarily require a finding that the first county had ceased to be "a principal place of residence" for the registrant * * *.

Appellants refute the evidence offered by BLM dealing with the telephone listings, stating that during the critical period and even today no phone service is available in the locality of the claim, and that the Watsonville listing was necessary for business.

[1] The Act only requires that an applicant be a residential occupant-owner of valuable improvements in an unpatented mining claim which, on the date of enactment of the Act, constituted a principal place of residence which the applicant and his predecessors in interest were in possession of for not less than 7 years. 30 U.S.C. § 702 (1976).

The article "a," as used in the Act, relating to "place of residence" clearly allows for the existence of additional dwellings. Dwight H. and Verna K. Huston, 21 IBLA 24 (1975); Frank O. O'Mew, 10 IBLA 187 (1973); Ola McCulloch Sibley, supra; cf. Funderberg v. Udall, supra. In any case, appellants have stated that the other residences amounted to speculation property which provided temporary shelter, and which they subsequently sold while continuing to retain and use their residence on the mining claim.

Both appellants and BLM have presented affidavits in support of their respective positions, but the showing by BLM and the Forest Service does not persuade the Board that the claim was less than a principal place of residence for appellants.

Therefore, we find that the Curtises are qualified applicants within the meaning of section 702 because the cabin on the Arrowhead mining claim constituted a principal place of residence for them during the critical period.

Under 30 U.S.C. § 703 (1976), however, where the lands for which application is made have been withdrawn in aid of a governmental unit other than the Department of the Interior, the Secretary of the Interior may convey an interest in the land only with the consent of the head of the governmental unit concerned. In this instance, the land sought by appellants is located in a national forest. For that reason it is for the head of the Forest Service to determine the nature of the relief, if any, that should be granted to appellants. Dwight H. and Verna K. Huston, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded for further action consistent herewith.

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge